

**906 KAR 1:200. Use of Civil Money Penalty Funds Collected from Certified Long-term Care Facilities.**

RELATES TO: KRS 194A.050(1), 209.005

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff), 42 U.S.C. 1396r(h)(3)(C)(ii)(IV)(ff)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff) and 42 U.S.C. 1396r(h)(3)(C)(ii)(IV)(ff) pertain to the collection and use of civil money penalties (CMP) imposed by the Centers for Medicare and Medicaid Services (CMS) on certified long-term care facilities (serving Medicare and Medicaid beneficiaries) which do not comply with applicable federal health and safety laws and regulations. Except for temporary use in the case of sudden nursing facility relocations, natural disasters, or similar emergencies, states are required to obtain prior approval from CMS for any new project, new grantee, or new use of federally imposed CMP funds, and any state-approved use or project that is currently in effect for a period that will endure more than thirty-six (36) months after December 31, 2011. Upon approval by CMS, states may direct collected CMP funds to a variety of organizations if the funds are used in accordance with 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff) and 42 U.S.C. 1396r(h)(3)(C)(ii)(IV)(ff). This administrative regulation establishes a competitive grant program to provide funding to organizations which offer programs or services approved by CMS for the use of CMP funds, thereby establishing the CMP Fund Grant Program.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health and Family Services.

(2) "CMP" means civil money penalties imposed by CMS on certified long-term care facilities (serving Medicare and Medicaid beneficiaries) which do not comply with applicable federal health and safety laws and regulations;

(3) "CMS" means the Centers for Medicare and Medicaid Services.

(4) "EAC" means the Elder Abuse Committee created by KRS 209.005.

(5) "Funding" means a grant from collected CMP funds distributed by the cabinet upon approval by CMS.

Section 2. Funding Opportunities. Collected CMP funds may be used to support activities which benefit Kentucky's residents of certified long-term care facilities, including:

(1) Assistance to support and protect residents of a certified long-term care facility that closes (voluntarily or involuntarily) or is decertified, and may include offsetting the costs of relocating residents to a home and community-based setting or another facility;

(2) Projects that support resident and family councils;

(3) Consumer involvement activities which assure quality care in long-term care facilities; or

(4) Facility improvement initiatives approved by CMS, which may include:

(a) Joint training of facility staff and the cabinet's long-term care facility surveyors;

(b) Technical assistance for facilities implementing quality assurance programs; or

(c) The appointment of temporary management firms.

Section 3. Prohibited Uses of CMP Funds. CMP funds shall not be approved:

(1) For a project for which a conflict of interest exists or the appearance of a conflict of interest exists;

- (2) If the applicant is currently paid by a federal or state source to perform the same function as the proposed CMP project or use;
- (3) For capital improvements to a long-term care facility, or to build a long-term care facility;
- (4) To pay for services or supplies that are the responsibility of the long-term care facility, including laundry, linen, food, heat, or staffing costs;
- (5) To pay the salaries of temporary managers who are actively managing a long-term care facility; or
- (6) To recruit or provide Long-Term Care Ombudsman certification training for staff or volunteers, or investigate and work to resolve complaints.

Section 4. Applicants. (1) An entity that applies for and receives funding shall be qualified and capable of carrying out the intended project or use described in the State Request for Approval of Use of Civil Money Penalty Funds for Certified Nursing Homes.

- (2) Entities that may qualify for funding include:
  - (a) Consumer advocacy organizations;
  - (b) Resident or family councils;
  - (c) Professional or state long-term care facility organizations;
  - (d) State Long-term Care Ombudsman programs;
  - (e) Quality improvement organizations;
  - (f) Private contractors;
  - (g) Academic or research institutions;
  - (h) Certified long-term care facilities;
  - (i) State, local, or tribal governments; or
  - (j) Profit or not-for-profit organizations.

Section 5. Application Process. To apply for funding, an applicant shall:

- (1) Download a copy of the application titled State Request for Approval of Use of Civil Money Penalty Funds for Certified Nursing Homes from the cabinet's Web site at <http://chfs.ky.gov/os/oig/cmpfunds.htm>; and
- (2) Complete and email the application to the cabinet at the following web address: [CMPPAPPLICATION\\_OIG@KY.GOV](mailto:CMPPAPPLICATION_OIG@KY.GOV).

Section 6. Review of Applications. (1) Upon receipt of an application, the cabinet shall:

- (a) Review the application and determine if the application meets the criteria for use of collected CMP funds pursuant to:
    - 1. Sections 2 through 4 of this administrative regulation; and
    - 2. The application's instructions;
  - (b) Present each application that meets the criteria for use of collected CMP funds at the next scheduled EAC meeting following receipt of the application;
  - (c) Advise the EAC of each application not approved for review by the EAC due to the receipt of an:
    - 1. Incomplete application; or
    - 2. Application that does not meet the criteria for use of collected CMP funds; and
  - (d) Notify each applicant electronically if an application is not approved for review by the EAC, including the reason the application was not approved.
- (2) The EAC shall:
- (a) Review each application presented by the cabinet based on the criteria for use of collected funds; and
  - (b) Make a recommendation to the cabinet secretary regarding the ability of the applicant's

proposal to:

1. Improve resident outcomes; and
2. Advance the care and services provided in certified long-term care facilities.
- (3) Upon consideration of the recommendation made by the EAC and review of the application based on the criteria for use of collected CMP funds, the cabinet secretary shall forward the application to CMS, including the secretary's recommended award decision.

Section 7. Reporting. If an application is approved by CMS, the organization or entity from which the application originated shall:

- (1) Submit a quarterly report on the status of the project to the CMS regional office and the cabinet;
- (2) Submit a follow-up report within five (5) calendar days of conclusion of the funded project to the CMS regional office and the cabinet; and
- (3) Submit a final report monitoring the success of the project within six (6) months of conclusion of the funded project to the CMS regional office and the cabinet.

Section 8. Denials. An application that is denied shall not be subject to an appeal.

Section 9. Incorporation by Reference. (1) The Centers for Medicare and Medicaid Services, Region IV Atlanta, "State Request for Approval of Use of Civil Money Penalty Funds for Certified Nursing Homes", May 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (40 Ky.R. 209; 548; eff. 9-18-2013.)